

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

NEVADA DAIRY, LLC

Employer

and

Case 32-RC-260434

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS,
PROFESSIONAL, CLERICAL, PUBLIC & MISC
EMPLOYEES, DONNER & THE TAHOE BASIN,
RENO & NORTHERN NEVADA, LOCAL 533**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. SUMMARY

The petition in this matter was filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Professional, Clerical, Public & Misc Employees, Donner & the Tahoe Basin, Reno & Northern Nevada, Local 533 (Petitioner) on May 14, 2020,¹ under Section 9(c) of the National Labor Relations Act, as amended (the Act), seeking an election to represent a production and maintenance unit employed by Nevada Dairy, LLC (Employer) at its milk processing facility located in Reno, Nevada (Employer's facility). There are approximately 42 employees in the unit sought.

A telephonic hearing on the petition was held on May 26 before a Hearing Officer of Region 32 (Region 32 or the Region) of the National Labor Relations Board (the Board). No issues were litigated at the hearing. The only matter addressed at the hearing was whether to direct a manual or mail ballot election given the current extraordinary circumstances arising from the COVID-19 pandemic.²

As to the sole matter addressed at the hearing, the Employer objects to a mail ballot election, contending that a manual election can be safely conducted at the Employer's facility on June 18 or 25. Petitioner requests a manual election, or in the alternative, a mail ballot election, at the earliest practicable date.

¹ All dates hereafter are in 2020 unless otherwise indicated.

² On May 11, the Board issued its Decision in *Morrison Management Specialists, Inc. d/b/a Morrison Healthcare*, 369 NLRB No. 76 (2020) (*Morrison Healthcare*). In *Morrison Healthcare*, the Board held that representation hearings that involve witness testimony should be conducted by videoconference, not telephonically. *Id.*, slip op at 1. Consistent with *Morrison Healthcare*, since there were no issues litigated at this hearing, there was no need for witness testimony, and the hearing was conducted telephonically.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this proceeding, relevant Board law, and the extraordinary circumstances of a pandemic, for the reasons described more fully below, I shall direct a mail ballot election commencing on the earliest practicable date.

II. FACTUAL OVERVIEW

A. The COVID-19 Pandemic

The impact of the COVID-19 pandemic on daily life has been profound. As of June 3, 1,827,425 people in the United States have been infected with COVID-19 and 106,202 people have died from it.³ The Centers for Disease Control and Prevention (CDC) has determined that the best way to prevent the illness is to avoid being exposed to the virus. *How to Protect Yourself and Others*.⁴ Many of the measures recommended by CDC to prevent the spread of the virus are well-known at this point: maintain a six-foot distance between individuals, work or engage in schooling from home, avoid social gatherings, avoid discretionary travel, and practice good hygiene. *Id.* With respect to travel, the CDC advises that travel increases the chances of getting and spreading COVID-19, and recommends that before traveling, individuals should learn if COVID-19 is spreading in their local area or in any of the places they are going.⁵

The CDC and the Occupational Safety and Health Administration have issued specific interim guidance for the manufacturing industry, including the food processing industry, *Manufacturing Workers and Employers* (Interim Guidance).⁶ This Interim Guidance states that the virus is thought to spread mainly from person to person:

- Between people who are in close contact with one another (within about 6 feet, which is about two meters); and
- Through respiratory droplets produced when an infected person coughs, sneezes, or talks.

According to the Interim Guidance, recent studies indicate that people who are not showing symptoms can spread the virus, and it may also be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes. The Interim Guidance notes that this is not thought to be the main way the virus spreads, but acknowledges that we are still learning more about this virus.

With respect to the exposure to COVID-19 among manufacturing workers specifically, the Interim Guidance underscores that the manufacturing work environment—production or assembly lines and other areas in busy plants where workers have close contact with coworkers and supervisors—may contribute substantially to workers’ potential exposures. The Interim Guidance notes distinctive factors affecting manufacturing workers’ risk for exposure to COVID-19 including:

³ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

⁴ See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

⁵ See <https://www.cdc.gov/coronavirus/2019-ncov/travelers/faqs.html#Domestic-Travel>.

⁶ See <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-manufacturing-workers-employers.html>.

- **Distance between workers** – Manufacturing workers often work close to one another on production or assembly lines. Workers may also be near one another at other times, such as when clocking in or out, during breaks, or in locker/changing rooms.
- **Duration of contact** – Manufacturing workers often have prolonged closeness to coworkers (e.g., for 8–12 hours per shift). Continued contact with potentially infectious individuals increases the risk of COVID-19 transmission.
- **Type of contact** – Manufacturing workers may be exposed to the infectious virus through respiratory droplets in the air—for example, when workers in a plant who have the virus cough or sneeze. It is also possible that exposure could occur from contact with contaminated surfaces or objects, such as tools, workstations, or break room tables. Shared spaces such as break rooms, locker rooms, and entrances/exits to the facility may contribute to their risk.

The Interim Guidance suggests certain administrative controls employers should implement to promote social distancing, including the following: limiting facility access only to essential workers; if meetings must be held, such as at shift changes, breaking them into smaller groups instead of holding a larger meeting, and eliminating non-essential meetings; employees maintaining at least six feet of distance from others at all times, including on breaks; and providing visual cues (e.g., floor markings, signs) as a reminder to workers to maintain social distancing. Other Interim Guidance recommendations to limit exposure and transmission of COVID-19 include: cohorting (grouping together) employees to reduce the spread of COVID-19 in the workplace by minimizing the number of different individuals who come into close contact with each other, potentially reducing the number of workers outside of the cohort exposure to the virus; and educating employees to avoid touching their faces, including their eyes, noses, and mouths, particularly until after they have thoroughly washed their hands upon completing work and/or removing personal protective equipment (PPE).

A recent report published by the CDC, *COVID-19 Pandemic Planning Scenarios*⁷ (CDC Planning Report), contains a best estimate that 35% of individuals infected with COVID-19 are asymptomatic, meaning that they never exhibit symptoms during the course of their COVID-19 infection, yet they are just as infectious as symptomatic individuals. This CDC Planning Report further estimates that the mean time from exposure to symptom onset of COVID-19 is approximately six days.

Further, although not directly addressing Board elections, I note that the CDC has specifically issued guidance on elections, *Recommendations for Election Polling Locations*⁸ (CDC Election Guidance), stating that officials should encourage mail-in voting. Specifically, this CDC Election Guidance provides as follows:

Actions for elections officials in advance of election day

⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>.

⁸ See <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

Encourage voters to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations.

- Encourage mail-in methods of voting if allowed in the jurisdiction.

Many state and local governments have also issued restrictions tailored to the situation in specific communities. This petition involves Board agents and party representatives with offices located in three different counties in California, and the Employer's facility is located in Nevada. Specifically, the Region 32 office processing this petition is located in Oakland, California, in Alameda County. Petitioner counsel's office is located in Sacramento, California, in Sacramento County, and the Employer counsel's office is located in Roseville, California, in Placer County. The Employer's facility is located in Reno, Nevada, in Washoe County.

With respect to California's approach to the COVID-19 pandemic, since the start of California's statewide stay-at-home order (State Order) issued on March 19, California has moved forward on its four-stage Resilience Roadmap for modifying its State Order.⁹ Since May 8, California has been in early Stage 2, where retail, related logistics and manufacturing, office workplaces, limited personal services, outdoor museums, child care, and essential businesses can open with certain modifications. The State Order issued by California Governor Gavin Newsom (Governor Newsom) is a statewide order, and local orders may be more restrictive; when local orders conflict with the State Order, the most restrictive provision controls.

With respect to how California is handling its elections during the COVID-19 pandemic, on May 8, Governor Newsom issued Executive Order N-64-20¹⁰ (Executive Order) to protect Californians' public health by mailing every registered voter a ballot ahead of the November general election (November election). This Executive Order states that to preserve public health in the face of the threat of COVID-19, and to ensure that the November election is accessible, secure, and safe, all Californians must be empowered to vote by mail, from the safety of their own homes.

Alameda County, Placer County, and Sacramento County are all currently in Phase 2, during which gatherings of non-household members are not permitted. With respect to Alameda County specifically, on May 18, the Alameda County Health Officer issued Alameda County Order No. 20-11¹¹ (Alameda County Order), requiring that most people continue sheltering in their place of residence, avoid groups, stay at least six feet away from others, and avoid non-essential travel. It is a crime (a misdemeanor with up to \$1,000 in fines or six months imprisonment) to violate the Alameda County Order.

As for Nevada, on May 29, the State of Nevada, including Washoe County, entered Phase 2 of the Nevada United: Roadmap to Recovery,¹² in which all Nevadans are encouraged to

⁹ See <https://covid19.ca.gov/roadmap/#stage-4>.

¹⁰ See <https://www.gov.ca.gov/2020/05/08/governor-newsom-issues-executive-order-to-protect-public-health-by-mailing-every-registered-voter-a-ballot-ahead-of-the-november-general-election/>.

¹¹ See <http://www.acphd.org/2019-ncov.aspx>.

¹² See <https://nvhealthresponse.nv.gov/news-resources/press-releases/>.

continue staying at home and limiting trips outside of their homes as much as practicable to mitigate the spread of COVID-19, and to maintain at least six feet of social distancing per person for non-household members at all times. Phase 2 is currently scheduled to expire approximately on June 30, based upon Nevada meeting certain data trends necessary to enter into Phase 3.

With respect to how Nevada is handling its elections during the COVID-19 pandemic, in partnership with all 17 Nevada counties, Nevada's Secretary of State authorized conducting Nevada's June 9 primary election (Nevada primary) by mail due to the many health and safety concerns surrounding the COVID-19 pandemic, to keep Nevadans and poll workers healthy, and to keep voting accessible to all Nevada registered voters.¹³ For the Nevada primary election, all active registered voters will automatically receive a mail ballot delivered by the U.S. Postal Service. Instructions for voting by mail are included with each ballot. All ballots also come with a secure pre-addressed, postage-paid ballot return envelope that must be used for returning the ballot. Voters are reminded to sign their return envelope before dropping it in the mail.

Although communities nationwide have taken steps to prevent or slow the spread of COVID-19, the virus has continued to have a devastating impact in California, Nevada, and throughout the United States. The following chart illustrates the confirmed cases and deaths from COVID-19 in the applicable California and Nevada counties in California as of June 3:

	Confirmed Cases COVID-19	Deaths from COVID-19
Alameda County ¹⁴	3,517	104
Sacramento County ¹⁵	1,463	58
Placer County ¹⁶	240	9
Washoe County ¹⁷	1,618	61

B. The Employer's Ongoing Operations

The Employer is engaged in the milk processing business, which already has incredibly high cleanliness standards and is an essential business that has remained operational during the COVID-19 pandemic. As a result, its drivers and production and maintenance employees continue to report for work and perform their regular duties, albeit with at least some changes in regular operations to incorporate social distancing and sanitizing to the extent possible at the Employer's facility. According to the Employer, approximately 75 total individuals are currently working at the Employer's facility, with approximately 40-50% of this total staff above age 50 and only approximately two employees below age 25.

The Employer has taken additional precautions due to COVID-19 at the Employer's facility by: restricting all visitors unless necessary; requiring temperature screenings for all

¹³ See <https://www.mailitinnevada.com/>.

¹⁴ See <https://covid19.ca.gov/roadmap-counties/#top>.

¹⁵ See <https://www.saccounty.net/COVID-19/Pages/default.aspx>.

¹⁶ See <https://placer.maps.arcgis.com/apps/opsdashboard/index.html#/2e0154ae8a764c2fb8cccc5b58d5ce8e>.

¹⁷ See <https://covid19washoe.com/>.

individuals who enter; ensuring that all individuals present are appropriately socially distanced, at least six feet apart at all times; and providing all employees with PPE, including unspecified types of gloves, masks, sanitizer, and antibacterial soap. The Employer's facility also has a HEPA-filtered HVAC system, including air conditioning, that is deep cleaned monthly, and all of its restrooms are deep cleaned daily. Although the Employer is not testing its employees for COVID-19, at least one of its employees was tested for COVID-19 as a prerequisite for an unrelated medical procedure and tested negative for COVID-19. The Employer is unaware of any of its staff employed at its facility testing positive for COVID-19.

III. POSITIONS OF THE PARTIES

A. Petitioner's Position - Manual Election or Mail Ballot Election as Soon as Practicable

Petitioner requested a manual election in the truck shop at the Employer's facility from 11:00 a.m. to 4:00 p.m. on June 2 or on a Tuesday or Thursday as soon as practicable. Petitioner emphasizes that the election should not be postponed to June 18 or 25, as proposed by the Employer. In order to ensure that the election occur as soon as practicable, at the hearing, Petitioner agreed to waive the entire 10 day time period it is entitled to have the voter list before the election.

Alternatively, Petitioner requests a mail ballot election with mail ballots to be mailed out to eligible voters as soon as practicable and returned to the Region within two weeks for the mail ballot count. Petitioner notes that the Board has approved mail ballot elections in other cases due to the COVID-19 pandemic.¹⁸

B. Employer's Position - Manual Election at the Employer's Facility

The Employer argues that voting should be conducted entirely by manual election, based on the Board's longstanding policy favoring manual elections. The Employer asserts that postponing the manual election until June 18 or 25 serves the public interest and protects employees due to the current COVID-19 pandemic conditions, particularly in Alameda County and Washoe County. According to the Employer, a mail ballot election is not the most appropriate alternative and may be the more dangerous alternative to conduct this election.¹⁹

¹⁸ At the hearing, Petitioner cited *Atlas Pacific Engineering Company*, 27-RC-258742 (Order Denying Request for Review, May 8, 2020); and *Johnson Controls, Inc.*, 16-RC-256972 (Order Denying Request for Review, May 18, 2020).

¹⁹ At the hearing, the Employer argued that COVID-19 can be present on mail for up to five days and referenced the CDC's webpage entitled, *What Mail and Parcel Delivery Drivers Need to Know about COVID-19* (CDC Mail Guidance). See <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/mail-parcel-drivers.html>. Contrary to the Employer's argument, this CDC Mail Guidance does not indicate that COVID-19 can be present on mail for up to five days. Rather, one of the CDC's *Frequently Asked Questions* (FAQ) for how COVID-19 spreads is, "Am I at risk from COVID-19 from mail, packages, or products?" See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#How-COVID-19-Spreads>. The CDC's response to this FAQ is, "There is still a lot that is unknown about COVID-19 and how it spreads. Coronaviruses are thought to be spread most often by respiratory droplets. Although the virus can survive for a short period on some surfaces, it is unlikely to be spread from domestic or

With respect to a proposed date and times for a manual election, the Employer proposes a manual election be conducted on Thursday, June 18 or Thursday, June 25, or any other Tuesday or Thursday as soon as practicable thereafter, from 2:00 a.m. to 4:30 a.m., from 6:00 a.m. to 8:30 a.m., and from 2:30 p.m. to 3:30 p.m. The Employer proposes a voting area at the Employer's facility inside its truck shop, in an approximate 8,000 square foot, 2-story building with a front entry and side exit (voting area). The Employer asserts that the voting area is isolated from other employees; there are no surveillance cameras; it is apart from all administrative offices; and all eligible voters would be routed one-way, to insure that a six foot distance is maintained between voters at all times.

IV. ANALYSIS

The Board is charged, under Section 9 of the Act, with the duty to conduct secret ballot elections to determine employees' union representation preference and to certify the results of such elections. The Board's obligation to perform the function of conducting secret ballot elections must be taken very seriously, particularly at this time when the nation and the local community are facing public health and economic crises. I also am mindful of my obligation to appropriately exercise my discretion concerning the timing and manner of the election with due consideration to safety considerations in the context of a pandemic.²⁰ Thus, it is my obligation to conduct an election in this matter at the earliest practicable time and in the most responsible and appropriate manner possible under the circumstances.²¹

Although the Board prefers to conduct manual elections over conducting mail ballot elections, the Board has made it clear that mail ballot elections need not be reserved only for the most extraordinary circumstances, reasoning that "neither our precedent nor common sense supports such a stringent approach to the use of mail ballots." *Sutter Bay West Hospitals*, 357 NLRB 197, 198 (2011). Indeed, the Board has always acknowledged that circumstance may necessitate adaptations on the Board's part to facilitate an election. In *National Van Lines*, 120 NLRB 1343 (1956), the Board asserted that "circumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions." 120 NLRB at 1346, citing *Shipowners' Association of the Pacific Coast, et al.*, 110 NLRB 479, 480 (1954). The Board noted that, "[b]ecause of these circumstances, the Board has

international mail, products or packaging. However, it may be possible that people can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads." *Id.*

²⁰ In its April 17, 2020 press release, the Board stated that Regional Directors have discretion with respect to when, where and if an election can be conducted in accordance with existing Board precedent and the Board specifically noted that Regional Directors will consider the extraordinary circumstances of the current pandemic, to include safety, staffing, and federal, state, and local laws and guidance. See <https://www.nlr.gov/news-outreach/news-story/covid-19-operational-status-update>.

²¹ See *Atlas Pacific Engineering Company*, 27-RC-258742 (Order Denying Request for Review, May 8, 2020); *Touchpoint Support Services, LLC*, 07-RC-258867 (Order Denying Request for Review, May 18, 2020); *Johnson Controls, Inc.*, 16-RC-256972 (Order Denying Request for Review, May 18, 2020); *Roseland Community Hospital*, 13-RC-256995 (Order Denying Request for Review, May 26, 2020); *Seminole Electric Cooperative, Inc.*, 12-RC-256815 (Order Denying Request for Review, May 28, 2020); *2101 LLC d/b/a Intercontinental Truck Body*, 19-RC-258144 (Order Denying Request for Review, May 28, 2020).

invested Regional Directors with broad discretion in determining the method by which elections should be conducted.” *Id.*

The Board has determined that there are some instances in which a mail ballot election is appropriate because “of circumstances that would tend to make it difficult for eligible employees to vote in a manual election.” *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998). The Board has clarified that Regional Directors should consider, at a minimum, where employees are located geographically, if employees are temporarily scattered, whether there is an ongoing strike, lockout, or picketing, and the ability of voters to read and understand a mail ballot. *Id.* at 1145. The Board went on to say that there may be other relevant factors to consider and that extraordinary circumstances may warrant a departure from the specific guidelines articulated in that case. *Id.*

I acknowledge that absent public health concerns, I would not order a mail ballot election in this case. However, for the reasons articulated earlier, this election will not be held under normal circumstances. As noted above, current Federal, State, and County public health guidance strongly recommends discouraging gatherings and non-essential travel, and a mail ballot election minimizes such risk. A manual election at the Employer’s facility in Reno, Nevada would require a Board agent and all party representatives to travel from three different counties in California to Nevada to attend the manual election. Focusing on the Employer’s facility in Washoe County alone, as of June 3, there were 1,618 confirmed cases of COVID-19 in Washoe County and 61 Washoe County residents have died from COVID-19.

The Employer’s employees remain working at the Employer’s facility because they are drivers and production and maintenance employees that provide essential dairy products, and because of the nature of the work, no alternative exists to perform their work remotely. However, the Board does have an alternative to conducting a manual election.

I find that the COVID-19 pandemic presents an extraordinary circumstance that makes conducting a mail ballot election the most responsible and appropriate method for conducting a secret ballot election to determine the unit employees’ union representation preferences at this time. The safety of the voters, the observers, the party representatives, and the Board agent conducting the election must be considered in determining the appropriate method for conducting the election.

Although the Employer has offered certain accommodations in an effort to allow for some degree of social distancing and protection during the election, manual election procedures inherently require substantial interaction. Voters, observers, and party representatives would all need to appear at the Employer’s facility to participate in the election. Party representatives, the observers, and the Board agent would have to gather for approximately 15 to 30 minutes for the pre-election conference, including the check of the voter list and the parties’ inspection of the voting area. The Board agent and observers would need to share a voting area in an approximately 8,000 square foot office at the Employer’s facility for the duration of the proposed manual election spanning between five to six hours. The observers would need to check in voters on the voter list, in a process intended to allow for visibility of the checked list to both observers and the Board agent. The Board agent must provide a ballot to each voter, which each

voter must then mark in a voting booth and then place into one shared ballot box. Board agents often need to assist voters with placing their ballots in challenged ballot envelopes and completing the necessary information on the envelopes. The Board agent and observers might need to use a restroom at the Employer's facility, typically before and after the closing of the polls. The Board agent must also count the ballots cast by all voters at the end of the election, typically held in the same voting area, with the observers, party representatives, and other employees who wish to attend.

In these circumstances, the substantial interaction inherent in conducting a manual election presents a significant risk for all election participants despite the social distancing and other protective measures proposed by the Employer. Although the Employer directs that employees abide by certain protective measures while at work, it cannot police employees' adherence to those measures in the polling area and the Board agent cannot also police employees' adherence to those measures at the locations outside the polling area. Despite the Employer's precautions to minimize the transmission and spread of COVID-19 at the Employer's facility, any election participant could be an asymptomatic carrier of the virus.

Further, it is reasonable to conclude that conducting a manual election would only increase the possibility of greater interaction among the Employer's employees. This increased interaction may be minimal, such as an employee standing in a line that would not normally be necessary if the employee were performing work duties, or may be major, such as an employee infected with COVID-19, perhaps even unknowingly, reporting to work to vote in the election. The Board's manual election procedures do not contain an absentee or remote voting option; an employee must appear in person at the polls to vote. Additionally, conducting manual elections under the current circumstances could disenfranchise voters, as employees may be wary of participating in an election process involving the degree of interaction required to conduct a manual election and may therefore refrain from participation.

Since both the Petitioner and the Employer prefer a manual election, I do not take my determination to conduct a mail ballot election lightly. I do not find that a manual election is impossible, or that a mail ballot election is the only appropriate option. However, I have determined that, under the current circumstances, conducting a mail ballot election is the most responsible and appropriate method of holding an election without undue delay. In fact, directing a mail ballot election is consistent with current CDC guidance on elections, which acknowledges the inherent risk of in-person elections and, thus, encourages mail-in methods of voting if allowed during this extraordinary COVID-19 pandemic.

In sum, in accordance with the Board's duty under Section 9(a) of the Act to conduct secret ballot elections to determine employees' union representation preference, I am directing an election in this matter as soon as practicable. To ensure the safety of all participants, to avoid the potential for disenfranchisement of employees, and to ensure compliance with this Agency's obligations and responsibilities, I am directing a mail ballot election. A mail ballot election will provide the certainty of process and procedure to conduct an election within a reasonably prompt period and in a safe, responsible, and effective manner.

V. CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The parties stipulated and I find that the Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²²
2. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
3. The parties stipulated and I find that there is no history of collective bargaining between these parties in the proposed bargaining unit identified above and there is no contract or other bar in existence to an election in this case.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The parties stipulated and I find the following employees of the Employer constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time drivers, production employees, cooler employees, laboratory technicians, and plant maintenance and mechanics employed by the Employer at or assigned from its facility located at 500 Gould Street, Reno, Nevada, including employees stationed in Bishop, California, and Yerington, Nevada.

Excluded: All other employees, including administrative employees, professional employees, office clerical employees, guards, and supervisors as defined in the Act.

Thus, for the reasons detailed above, I will direct a mail ballot election in the Unit above, which includes approximately 42 employees.

²² Nevada Dairy, LLC, a Nevada limited liability corporation, with an office and place of business located in Reno, Nevada, is engaged in the business of dairy processing, manufacturing and distribution. During the last the months, the Employer has sold goods valued in excess of \$50,000, directly to customers located outside the State of Nevada.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, PROFESSIONAL, CLERICAL, PUBLIC & MISC EMPLOYEES, DONNER & THE TAHOE BASIN, RENO & NORTHERN NEVADA, LOCAL 533.**

A. Election Details

I have determined that a mail ballot election will be held for the reasons I have explained above.

The election will be conducted by mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 32, on **June 12, 2020**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 32 office by close of business on **June 26, 2020**. In order to be valid and counted, the returned ballots must be received at the Region 32 office prior to the counting of the ballots.

All ballots will be commingled and counted at a location to be determined by the Regional Director at **10:00 a.m. on June 30, 2020.**²³ The parties will be permitted to participate in the ballot count, which may be held by videoconference. No party may make a video or audio recording or save any image of the ballot count.

Any person who has not received a ballot by **June 19, 2020**, should immediately contact the Region 32 office at (510) 637-3300, or contact Board Agent Nicholas Tsiliacos at (510) 671-3046 to request a ballot.

B. Voting Eligibility

Eligible to vote are those in the Unit who were employed during the payroll period ending **Saturday, May 30, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States who are present in the United States may vote.

²³ If, on the date of the count, the Region 32 office is closed, or the staff of the Region 32 office is working remotely, the count will be done remotely. If the Regional Director determines this is likely, a reasonable period of time before the count, the parties will be provided information on how to participate in the count by videoconference.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this Decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Tuesday, June 9, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Region and served electronically on the other parties named in this Decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where

notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. **The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election.** For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Oakland, California this 5th day of June 2020.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney, Regional Director
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